

CHAPTER 9: LOAN CLOSING AND PROJECT LEASE-UP

9.1 INTRODUCTION AND OVERVIEW

After a loan has been approved, as described in Chapters 4 through 6, the Loan Originator takes steps to prepare for loan closing and project lease-up. This chapter describes the rules and procedures of these activities.

- Section 1 covers loan closing. It addresses the loan closing process in three parts: preparing for closing, going to closing, and post-closing activities. Prior to closing, a number of documents must be prepared. At closing, documents are executed and ownership of the property is transferred to the borrower. Post-closing, the loan docket is completed, documents are filed, and the loan file is forwarded to the Loan Servicing staff.
- Section 2 describes Agency responsibilities during project lease-up. When the loan is closed and construction completed, the borrower begins to lease up the project. At this point, the Agency must begin to monitor the borrower's compliance with rent and occupancy rules. This will involve meetings with the borrower and visits to the site.

It is important for the process to move quickly from loan approval through loan closing. Once a loan is obligated, as described in Chapter 6, a debt to the U.S. treasury is established, resulting in interest costs to the Agency and taxpayers. The Loan Originator must work with the borrower to establish realistic expectations of the construction period so that after funds have been obligated, construction can be completed and funds can be disbursed as quickly as possible. Moving a project from loan approval to loan closing in a timely manner will help make the most effective use of program funds.

SECTION 1: LOAN CLOSING

9.2 OVERVIEW

This section addresses the timing and general requirements of loan closing and then describes the key responsibilities of each of the actors in the loan closing process. It discusses the borrower's and the Agency's roles in choosing a closing agent, the closing agent's responsibilities, and the role of the loan processing staff. The section then describes the actual process of loan closing and the actions that take place after closing to complete the loan docket.

9.3 TIMING OF LOAN CLOSING

The timing of loan closing depends on the method of project financing. As described in Chapter 5, paragraph 5.14 C.5, there are two methods of financing construction for multi-family housing projects — interim financing and multiple advances. The method approved for the

project is specified in the final application. Exhibit 9-1 shows the timing of the loan closing activities in relation to project construction.

- For interim financing, Agency loan closing takes place after construction is complete.
- For multiple advances, loan closing takes place prior to construction.

9.4 LOAN CLOSING REQUIREMENTS

At loan closing, the Agency and the borrower execute all necessary documents to transfer ownership and secure financing for the project. At this time, they may collect any items not already provided to meet the conditions indicated in the letter.

A closing agent selected by the borrower and approved by the Agency must be present.

Before the loan can be closed, the borrower must demonstrate that all program and property requirements have been met and that the loan is adequately secured as specified in the letter of conditions that was sent to the borrower at loan approval. Briefly, the borrower must demonstrate that the following conditions are met:

- The financing is secure. All funds sources proposed in the application are brought to loan closing for disbursement.
- The construction has been completed (or in the case of multiple advances, will be completed) in accordance with the plans and specifications for the costs projected in the application.
- The property is adequately secured and the Agency's lien position requirements are met. Chapter 8 provides further details on security requirements.
- The borrower has met program and Civil Rights requirements; for example, prior to closing, the borrower has put in place an Agency-approved accounting system.

Exhibit 9-1**Summary of Loan Closing Activities Performed by Agency Staff**

**Construction→
Performed for
Interim Financing**

Preparing for Closing

- Select closing agent or title insurance company
- Review title opinion/insurance binder
- Provide necessary documents to OGC to prepare/finalize closing instructions
- Provide closing instructions and necessary documents to closing agent (see **Attachment 9-A**)

*Closing agent arranges closing date and
prepares closing documents*

- Review promissory note and interest credit agreement
- Determine size of initial check (if financing is by multiple advances)
- Order loan check from Finance Office

Loan Closing

- Attend closing (if necessary)

*Closing agent reviews closing documents with all
parties and obtains applicant signature on all closing
documents and disburses loan funds*

Post-Closing Activities

*Closing agent records mortgage or deed of trust and
secures title*

- Obtain closing documents, review them to determine acceptability, and sign the closing instructions
- Enter closing data into AMAS (transaction "M1F") and establish the AED
- Compile final documents in the loan file and forward them to OGC for review (if required).
- Forward completed loan docket to loan servicing staff

**← Construction
Begins for Multiple
Advances**

9.5 CHOOSING THE CLOSING AGENT AND TITLE COMPANY

Every loan closing requires a closing agent to close Agency real estate loans, provide necessary title clearance services, and perform other closing-related duties prescribed by the Agency. An attorney or title company, chosen by the borrower and approved by the Agency, may perform this role.

A. Lists of Approved Closing Agents and Title Companies

State Offices must maintain a list of title insurance companies that are authorized to provide title insurance and perform closings in the State. Each approved title insurance company may provide a master list of local title offices and attorneys that are covered by its closing protection letter and are thereby authorized to perform closings on behalf of that title insurance company. The State Office determines which title insurance companies will be authorized to issue title insurance policies for Agency loans based on RD Instruction 1927-B, Real Estate Title Clearance and Loan Closing.

B. Procedures for Choosing a Closing Agent or Title Company

If an applicant selects a title office or attorney that is on the State Office list, no further verifications are necessary. However, if the company or attorney is not on the list, the following steps must be taken.

- If the office or attorney selected is not on the list, they should provide an acceptable closing protection letter from an approved title insurance company on the Agency's list.
- Alternatively, title companies that are not on the list may submit *Form RD 1927-20, Certification of Title Insurance Company*, and attorneys may submit *Form RD 1927-19, Certification of Attorney*, to request Agency approval. In this case, the following steps must be taken.
 - ◇ The Loan Originator must send the title company or attorney *Form RD 1927-2, Transmittal of Form RD 1927-19/1927-20* and attach *Form RD 1927-20, Certification of Title Insurance Company*, or *Form RD 1927-19, Certification of Attorney*, as appropriate.
 - ◇ The title company or attorney must return *Form RD 1927-20, Certification of Title Insurance Company* or *Form RD 1927-19, Certification of Attorney* to the Loan Originator for review. Standards for evaluating a title company or attorney's qualifications are contained in RD Instruction 1927-B, Real Estate Title Clearance and Loan Closing.
- To notify a title company or attorney of its selection and approval, the Loan Originator should send *Form RD 1927-4, Transmittal of Title Information*, and attach *Form RD 1927-9, Preliminary Title Opinion* or title insurance binder if an attorney is performing loan closing.

9.6 CLOSING AGENT RESPONSIBILITIES

The closing agent conducts the loan closing and has certain other pre- and post-closing responsibilities in accordance with RD Instruction 1927-B, Real Estate Title Clearance Loan Closing. The list of tasks performed by the closing agent is provided in Exhibit 9-2.

Exhibit 9-2

Responsibilities of a Closing Agent

Prior to Closing

- Provide a title insurance binder within 10 days of the date of the transmittal letter.
- Assess whether there will be any problems meeting the closing conditions as provided in the closing instructions.
 - ◇ Assess whether, after closing, the lien position will be as required by the Agency.
 - ◇ Ensure that the applicant provides a copy of an acceptable hazard insurance policy or insurance binder and evidence that one year's premium has been paid.
 - ◇ Confirm that the applicant has flood insurance, if applicable.
 - ◇ Confirm that all required taxes have been paid.
 - ◇ Collect any other information the Agency has instructed the applicant to provide.
 - ◇ Ensure that the applicant is aware of any funds that must be brought to closing.
 - ◇ If interim financing, make sure that there are no outstanding demands for payment from a contractor or supplier for construction work.
 - ◇ If required by State Supplement, the closing agent will require that an affidavit regarding work of improvement, provided by the Agency, be completed and executed. *Form RD 1927-5, Affidavit Regarding Work of Improvement*, may be used for this purpose. The affidavit must be signed at closing by the borrower when a loan is being made to a borrower who already owns the real estate to be mortgaged. The affidavit must be signed at closing by the seller when a loan is being made to a borrower to enable the borrower to acquire the property.
- Establish a mutually convenient date for the loan closing.

On Day of Loan Closing

- Complete *Closing Statement*, which itemizes the costs to be paid by the applicant at closing.
- Confirm that the applicant has no outstanding judgments. If any additional entries of record are identified, the loan cannot be closed until these entries are cleared or approved.
- Review closing documents with all parties and obtain required signatures.
- Disburse funds as required.

After Closing

- Record security documents.
- Return to the Agency executed documents and other loan information provided by it.
- Secure a title insurance policy within 14 days of loan closing.

9.7 LOAN PROCESSING STAFF RESPONSIBILITIES

The Loan Originator is responsible for coordinating all aspects of the loan closing process so that all of the conditions for loan closing are met and the required documents are prepared and ready to be signed by the day of closing.

Between the time the loan is approved and the day of closing, the Loan Originator must work with the applicant and the closing agent to ensure that all appropriate documents are prepared prior to closing. The Loan Originator must also work with the Office of General Counsel (OGC) to obtain loan closing instructions from them. Closing must not take place until the applicant has met all of the conditions outlined in the letter of conditions for loan closing sent to them by the Agency when the loan was approved (see 6.21 for details on the letter of conditions).

A. Work With the Applicant

The Loan Originator must work with applicants to ensure that they understand the steps required to reach closing successfully and that they are fully aware of the responsibilities they will assume when the loan closes. Items to cover prior to closing include:

- Meeting, prior to loan closing, all of the conditions specified in the letter of conditions;
- Requirements for the selection of a closing agent;
- A list of current Agency-approved closing agents;
- Documents and information that must be provided prior to closing;
- Insurance requirements; and
- Applicant responsibilities at loan closing.

These items might be covered at the pre-construction meeting (See Chapter 10), the pre-lease-up meeting (See Section 2), or, if necessary, at a pre-closing meeting.

B. Review Title Insurance Binder

Upon receipt of a title insurance binder from the closing agent, the Loan Originator must carefully review it to ensure that:

- The borrower will become the owner of the property;
- All prior liens have been removed;
- Outstanding judgments have been resolved; and

- Property rights intended as security are available.

In consultation with OGC, the Loan Originator should review the legal description and any exceptions to the title to determine if the lien position is in jeopardy. If the exceptions will adversely affect the property's title, suitability, or security value, the loan cannot be closed.

If any required information is omitted, or if the title insurance binder is not satisfactory, the Loan Originator should return it to the closing agent for corrections.

C. Prepare Documents for Closing Instructions

The Loan Originator must obtain loan closing instructions from OGC and then forward these instructions to the loan closing agent. The Loan Originator should not request closing instructions from OGC until the Loan Originator has determined that the applicant will meet the loan closing conditions specified in the letter of conditions sent to the applicant by the Agency at loan approval. The Loan Originator will take the following steps:

- Assemble the loan docket to be provided to OGC, including the documents and information provided as **Attachment 9-A**.
- Forward to OGC the docket and documents. OGC will review the information provided and complete any portions if necessary. If the loan docket includes any documents that require special attention, such as a bond (replacing a promissory note) or an intercreditor agreement, OGC will review these also.

D. Provide Closing Agent with Closing Instructions and Materials

When OGC completes its review of the loan docket and documents and determines that the loan can be closed, it will provide the Loan Originator with the loan closing instructions. The Loan Originator must forward these instructions and the documents and information listed in **Attachment 9-A** to the closing agent.

All forms needed for loan closing as well as copies of other documents to facilitate the closing agent's review (e.g., tax bills, legal descriptions, or surveys) will be attached to the closing instructions. The closing agent must ensure that they are executed at loan closing and returned to the Agency along with the other closing documents.

E. Obtain Loan Check

The amount of the check will depend on whether the borrower is obtaining interim financing or multiple advances. Funds cannot be disbursed until the mortgage is filed.

- If the applicant obtained interim financing, the check will be for the entire amount of the loan. If any funds are being held back for any reason (e.g., incomplete construction), these funds will be put in a supervised account.

- In the case of multiple advances, the check will be for an initial amount. Additional checks will be requested on a periodic basis to cover costs as the borrower requests them. See Chapter 10 for guidance on preparing partial payments.

To obtain a loan check, the Loan Originator must use AMAS as described below. Note that the check request can take as long as five days from request to receipt.

- Check the screen [M1AI] for the undisbursed amount of the loan and the MDL.
- Check the screen [M1XI] for the disbursed amount and accrued interest.
- Make sure that the disbursed amount plus accrued interest does not exceed the MDL. If it exceeds the MDL, the check amount will default to the amount available.
- Complete screen *Request Loan/Grant Check* [M1C].

F. Establish Payment Schedule

The borrower is required to make loan payments on a monthly basis, payable on the first of each month. If closing does not occur on the first of the month, principal and interest payments for the period before the first payment are added to the loan amount as described in the FMI for *Form RD 1944-52, Multi-Family Promissory Note*.

G. Establish Initial Disbursement

For interim financing, all loan funds are disbursed at the Agency closing. If there is a reason to retain funds (e.g., if small construction tasks still need to be completed) these funds will still be disbursed, but they will be held in a supervised account.

For multiple advances, however, funds are disbursed over time. The initial disbursement will cover initial expenses such as the cost of the land, attorney fees, and other closing costs. Prior to closing, the borrower will inform the Agency of the amount needed for the initial disbursement. (Disbursements after closing are requested on a monthly basis for expenses incurred during the month. See Chapter 10 for a discussion of how to request partial payments.)

9.8 ACTIONS AT LOAN CLOSING

At loan closing, the Agency and the borrower must execute all necessary documents to transfer ownership and secure financing for the project.

At loan closing, the following actions must take place.

- Each document listed in **Attachment 9-A** is reviewed and executed as necessary.
- If any changes need to be made to the text of a security instrument or promissory note, a line should be drawn through only the specific language to be deleted. All persons signing the security instrument or promissory note must initial the changes.

- The borrower receives the loan funds in the form of a check.
 - ◊ If the borrower is receiving interim financing, the check for the loan funds may be signed over directly to the borrower. However, if any funds are being withheld (e.g., for small construction items that are not yet complete), the funds will be deposited in a supervised account and the borrower or contractor will receive a check written on the supervised account after work is complete.
 - ◊ If the borrower is receiving multiple advances, he/she will receive a check for the initial disbursement.

9.9 POST-CLOSING ACTIVITIES

After closing, all documents need to be accounted for, recorded, and filed as necessary.

A. Obtaining and Reviewing Closing Documents

Within one day of closing, the closing agent will provide all closing documents to the Agency. The Loan Originator will review the mortgage to ensure the Agency received proper lien priority and review all other documents to ensure that they were properly executed and recorded. A final copy of the mortgage and the title insurance policy may be delivered later as described in subparagraphs B and C below.

When all documents have been reviewed, the Loan Originator will sign the Loan Closing Instructions to show that loan was closed in accordance with the instructions.

B. Record Mortgage or Deed

The closing agent must record the mortgage (or deed of trust) after closing. The closing agent will submit an unrecorded copy to the agency along with other closing documents. The recorded copy should be provided to the Agency as soon as it is completed. If the original is retained by the filing official, a confirmed copy showing the date and place of recordation must be provided.

C. Secure Title

The closing agent must secure the title insurance policy and deliver it to the Loan Originator and applicant within 14 days of closing.

D. Establish the Amortization Effective Date (AED)

The Amortization Effective Date (AED) is the date the system begins accruing interest on the loan and establishes the schedule of payments. Once the closing date occurs or the last advance check is distributed, whichever occurs last, the AED is established. If the closing date or the last advance is distributed on the first day of the month, the AED is the same day. If the loan closing occurs on any other day, the AED is the first day of the following month.

E. Put Closing Information into AMAS

When all closing documents are complete, the Loan Originator should enter the closing information into AMAS, using screen *Loan Closing* [M1F].

F. Complete Loan Docket and Transfer to Servicing Staff

Once the information has been entered into AMAS and all closing documents are filed, as necessary, the Loan Originator should put all loan closing documents in the loan docket and forward the loan docket to appropriate staff for servicing. (The servicing staff will service the loan in accordance with procedures outlined in the Project Servicing Handbook.)

SECTION 2: PROJECT LEASE-UP

9.10 PROJECT LEASE-UP REQUIREMENTS

Once the loan is closed, the applicant becomes a borrower. Borrowers are then subject to program requirements regarding project management, occupancy, rents, subsidies, and financial management. Marketing, as required by the borrower's approved Affirmative Fair Housing Marketing Plan, must begin no less than 90 days prior to any rental activity. During project lease-up, borrowers should make special efforts to ensure that they comply with program rent and occupancy requirements as they lease available units. The Agency will take steps to help borrowers understand their responsibilities and will monitor the project closely in the early stages to ensure that these requirements are met. The Asset Management Handbook provides detailed guidance on these requirements. Exhibit 9-3 shows where the applicable requirements can be found in the regulation.

Exhibit 9-3

Project Management Requirements

7 CFR 3560, subpart C: Borrower Management and Operations Responsibilities
 7 CFR 3560, subpart D: Multi-Family Housing Occupancy
 7 CFR 3560, subpart E: Rents
 7 CFR 3560, subpart F: Rental Subsidies
 7 CFR 3560, subpart G: Financial Management

9.11 MONITORING PROJECT LEASE-UP

Borrowers should be prepared to reach full occupancy with eligible tenants as quickly as possible. Loan processing staff must coordinate with loan servicing staff to monitor the lease-up process to make sure that the following key program requirements are being met:

- Affirmative marketing has been taking place at least 90 days prior to any rental activity, as required by an approved Affirmative Fair Housing Marketing Plan, to market the property to all eligible persons;
- Program occupancy rules are being observed; (All tenants admitted are eligible and all eligible tenants are being admitted.) and
- Program rent rules are being observed. Tenants are being charged the correct rents as evidenced in their leases.

The Agency will receive project worksheets and tenant certifications on a monthly basis as the project leases up. Field office staff with the responsibility for monitoring project lease-ups must check, as part of their review of these documents, that rent and occupancy requirements are being observed.

In addition, there are three key occasions early in the project's life to monitor project operations and address issues with the borrower — the pre-occupancy conference, the 90-day visit, and the 11-month warranty inspection.

A. Pre-Occupancy Conference

The pre-occupancy conference takes place 90 to 120 days before lease-up begins and includes the Agency, the borrower, and the management agent. This meeting is a time to explain program requirements and reach agreement on how property will be operated. At a minimum, the Loan Originator should explain the following items.

- **Management documents.** The Agency should discuss the management plan, management agreement, lease, and budget and point out aspects that are particularly important to program compliance. Examples of documents to review at this meeting include:
 - ◇ *Form RD 1944-7, Multiple Family Housing Interest Credit and Rental Assistance Agreement;*
 - ◇ *Form RD 1944-29, Worksheet for Credit and Rental Assistance;*
 - ◇ *Form RD 1944-8, Rural Housing Service Tenant Certification;*
 - ◇ *Form RD 1910-5, Request for Verification of Employment;*
 - ◇ *Form HUD-935.2, Affirmative Fair Housing Marketing Plan;*
 - ◇ *Form RD 400-4, Assurance Agreement;*
 - ◇ *Form HUD-928.1, HUD Fair Housing Poster (English);*
 - ◇ *Form HUD-928.1A, HUD Fair Housing Poster (Spanish) in addition to the English version of the poster, when appropriate;*
 - ◇ *Form AD-475A, USDA “...and Justice for All” Poster; and*
 - ◇ *Form RD 400-4, Assurance Agreement.*
- **Initial operating issues.** In accordance with the Loan Agreement, the borrower is required to provide initial operating capital (two percent contribution) by the time the loan is closed or interim funds are obtained, whichever occurs first. The Loan Originator should ensure that these funds are deposited in the General Operating Account and made available to the project. The Loan Originator should also review with the borrower the list of expenses that the Agency approved during the loan application stage (6.9 D).

- **Tenant issues.** Initial tenant issues are likely to include tenant eligibility, waiting list procedures, and tenant grievances (see Chapter 6, Project Occupancy of the Asset Management Handbook).
- **Civil rights issues.** Ensure that the borrower understands that marketing, in accordance with their approved Affirmative Fair Housing Marketing Plan, must begin no less than 90 days prior to the beginning of rental activities. Also that the “approved Plan” must be posted in a conspicuous location, along with the HUD Fair Housing Poster and the USDA “...and Justice for All” poster. Provide the borrower with the required posters and the approved marketing plan at this time. It is also an opportunity to review with the borrower the requirements of the *Assurance Agreement*. This form requires the borrower to collect and maintain statistical data concerning race, national origin, and sex in a manner that will enable the Agency to complete periodic civil rights compliance reviews.

Where a significant number or proportion of the population needs information in a language other than English, the borrower shall take reasonable steps to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.

B. Ninety-Day Visit

The 90-day visit is a chance to see that the project is making progress with lease-up and that program rules are being observed. It should take place between the 60th and 90th days that a project is open for occupancy.

The 90-day visit is similar to the supervisory visit described in Chapter 9, Monitoring Borrower Compliance of the Asset Management Handbook but will concentrate on issues appropriate to a new project (e.g., there is generally no need for a physical inspection since all units are new). The following key items should be examined during the visit.

- **Tenant files.** Confirm that tenant files reflect compliance with program rent and occupancy rules.
 - ◇ Do the files demonstrate that the units are occupied by eligible tenants?
 - ◇ Are the rents indicated in the lease consistent with program rent requirements?
 - ◇ Do the leases conform with agency requirements?
- **Marketing plan.** Confirm that the borrower is following the project marketing plan.
- **Waiting list.** Check the waiting list for rejections, acceptances, and withdrawals to confirm that selection priorities were observed and applied correctly.
- **Borrower contribution.** Confirm that the borrower has deposited the required two percent contribution in the general operating account and that these funds are being

used for initial operating expenses. In particular, make sure that the borrower understands that these funds are to be spent on initial operating expenses.

- **Financial management.** Confirm that all appropriate accounts have been set up and systems are in place to track funds. See the Asset Management Handbook for guidance on financial management.
- **Project maintenance.** Confirm that the project has a maintenance plan and that initial maintenance has been performed satisfactorily.

C. Eleven-Month Warranty Inspection

Eleven months after project completion, the Agency should conduct a physical inspection of the property to verify the condition of items under the one-year builder's warranty and ensure that there are no repairs to be made before the warranty expires. This inspection is a good time to check on the property's general physical condition and address any other physical property or maintenance issues that are identified.

ATTACHMENT 9-A

LOAN CLOSING DOCUMENTS

The following documents must be prepared prior to closing and will be executed/ submitted at closing:

- Promissory Note (*Form RD 1944-52, Multi-Family Housing Promissory Note*);
- Interest Credit and Rental Assistance Agreement (*Form RD 1944-7, Multi-Family Housing Interest Credit and Rental Assistance Agreement*);
- Mortgage;
- Financing Statements and/or Security Agreements (if applicable);
- Title Insurance (Borrower must provide binder prior to closing, policy after closing);
- Organization Papers (Certificate of Good Standing, Partnership Agreement);
- Affidavits (from officers and general partner) — as appropriate;
- Evidence of Payment of Taxes;
- Evidence of All Required Insurance Policies (property, liability, and fidelity bond) as required by 7 CFR 3560.105;
- Deeds; and
- Loan Closing Instructions.

Other items to be completed not later than loan closing:

- Meeting conditions identified in letter of conditions (must be signed by the borrower and filed with the Agency);
- Evidence of deposit of initial operating capital;
- Evidence of initial equity contribution; and
- Applicant's certification of availability or unavailability of other Government assistance.